

CHAPTER 1208  
RULES OF CRIMINAL PROCEDURE

[SEE SECTIONS 684.19 AND 813.4 OF THE CODE]

IN THE MATTER OF	)	
THE	)	REPORT OF THE
RULES OF CRIMINAL PROCEDURE	)	SUPREME COURT

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TO THE 1978 REGULAR SESSION OF THE SIXTY-SEVENTH  
GENERAL ASSEMBLY OF THE STATE OF IOWA:

Pursuant to sections 684.18(1), 684.19, and 813.4, The Code, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly amendments in existing Rules of Criminal Procedure as follows:

Rule 5(3).

That rule 5(3) be amended as follows:

"3. Witness names and minutes. The prosecuting attorney shall, at the time of filing such information, endorse or cause to be endorsed thereon the names, ~~occupations, and last known addresses~~ of the witnesses whose evidence the prosecuting attorney expects to introduce and use on the trial of the same, and shall also file with such information, ~~of each witness whose name is endorsed upon the information, a statement sufficient to enable the defendant to prepare his defense~~ the minutes of evidence of such witness as defined in rule 4(6)(a)."

Rule 5(4).

That rule 5(4) be amended as follows:

"4. Approval by judge. Prior to the filing of the information, a district judge, district associate judge or magistrate having jurisdiction of the offense must approve the information by a finding that the evidence contained in the information and the minutes of ~~testimony~~ evidence, if unexplained, would warrant a conviction by the trial jury. If not approved, the charge may be presented to the grand jury for consideration. At any time after judicial approval of an information, and prior to the commencement of trial, the court, on its own motion, may order said information set aside and said case submitted to the grand jury."

Rule 8(2)(d).

That rule 8(2) be amended by adding the following new paragraph:

"d. Challenging pleas of guilty. The court shall inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal."

Rule 17(5)(d).

That rule 17(5)(d) be amended as follows:

"d. Affinity or consanguinity, within the fourth degree, to the person alleged to be injured by the offense charged, or on whose ~~preliminary-information~~ complaint, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law."

Rule 17(5)(e).

That rule 17(5)(e) be amended as follows:

"e. Standing in the relation of guardian and ward, attorney and client, employer and employee, or landlord and tenant, or

being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose ~~preliminary-information~~ complaint, or at whose instance, the prosecution was instituted, or in his or her employ on wages."

Rule 17(17).

That rule 17(17) be amended as follows:

"17. Alternate jurors. The court may impanel one or more alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of three more persons if one alternate juror is desired, or four more persons if two alternate jurors are desired, and so on in like proportion, who are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in this rule. Each ~~party~~ side must then strike off one such name, and the one or two or appropriate number remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged."

Rule 18(1)(a)(1).

That rule 18(1)(a)(1) be amended as follows:

"(1) Reading indictment and plea. The clerk or prosecuting attorney must read the accusation from the indictment or the supplemental indictment, as appropriate, and state the defendant's plea to the jury."

Rule 18(2).

That rule 18(2) be amended as follows:

"2. Advance notice of evidence supporting indictments or informations. The prosecuting attorney, in offering trial evidence in support of an indictment, shall not be permitted to

introduce any witness the minutes of whose testimony was not presented with the indictment to the court; in the case of informations, a witness may testify in support thereof if the witness' identity and a minute of the witness' evidence has been given pursuant to these rules. However, these provisions are subject to the following exception: Additional witnesses in support of the indictment or trial information may be presented by the prosecuting attorney if he or she has given the defendant's attorney of record, or the defendant if he or she has no attorney, a minute of such witness' testimony evidence, as defined in rule 4(6)(a), at least ten days before the commencement of the trial."

Rule 18(5)(c).

That rule 18(5)(c) be amended as follows:

"c. ~~Alternate-jurors; Separation and-deliberation of jurors. The-court-may-panels-alternate-jurors,-which-may-replace-jurors originally-selected,-in-the-manner-provided-in-civil-cases-~~ The jurors shall be kept together unless the court permits the jurors to separate as in civil cases; and the officers having charge of the jury shall be sworn to suffer no person to communicate with them except as provided for in civil cases."

Rule 18(5)(h).

That rule 18(5)(h) be amended as follows:

"h. ~~Separation-of-jurors~~ Jury deliberations. On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court, unless the court permits the jurors to separate temporarily overnight, on weekends or holidays, or in emergencies. ~~During-their-deliberations,~~ The officer in charge must be sworn to not suffer any communication to be made to them during their deliberations, nor to make any himself or herself, except to ask them if they have agreed on a verdict, unless by order of court; nor to communicate to any person the

state of their deliberations, or the verdict agreed upon before it is rendered."

Rule 22(1).

That rule 22(1) be amended as follows:

"1. Entry of judgment of acquittal or conviction. Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court must fix a date for pronouncing judgment, which must be within a reasonable time but not less than ~~eight~~ fifteen days after the plea is entered or the verdict is rendered, unless defendant consents to a shorter time."

Rule 22(3)(e).

That rule 22(3)(e) be amended as follows:

"e. Notification of right to appeal. After imposing sentence in a case, the court shall advise the defendant of his or her statutory right to appeal ~~as provided in rule 15-1 of the rules of the supreme court~~ and the right of a person who is unable to pay the costs of appeal to apply to the court for appointment of counsel and the furnishing of a transcript of the evidence as provided in sections 814.9 and 814.11, Supplement to the Code 1977.

Such notification shall advise defendant that filing a notice of appeal within the time and in the manner specified in section 814.4, Supplement to the Code 1977, is jurisdictional and failure to comply with these provisions shall preclude defendant's right of appeal.

The trial court shall make compliance with this rule a matter of record."

Rule 22(3)(f).

That rule 22(3) be amended by denominating existing paragraph f as "g" and adding the following new paragraph f:

"f. Exercise of right to appeal. After notifying the defendant of his or her statutory right to appeal, the trial court may ask the defendant if he or she desires to appeal. If after appropriate consultation with counsel the defendant responds affirmatively, the court shall direct defense counsel to file notice of appeal forthwith and, if the defendant is indigent, shall at once order the transcript and appoint appellate counsel, without awaiting application therefor under sections 814.9 and 814.11, Supplement to the Code 1977."

Rule 23(2)(a).

That rule 23(2)(a) be amended as follows:

"a. Procedural steps in seeking or ordering new trial. The application for a new trial can be made only by the defendant and shall be made ~~before-judgment~~ not later than 45 days after plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction may be rendered, but in any case not later than five days before the date set for pronouncing judgment, but where based upon newly discovered evidence may be made after judgment as well. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In any case the court shall specify in the order the grounds therefor."

Rule 23(3)(a).

That rule 23(3)(a) be amended as follows:

"a. Motion in arrest of judgment; definition and grounds. A motion in arrest of judgment is an application by the defendant that no judgment be rendered on a finding, plea, or verdict of guilty. Such motion shall be granted when upon the whole record no legal judgment can be pronounced. A defendant's failure to

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challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude his or her right to assert such challenge on appeal."

Rule 23(3)(b).

That rule 23(3)(b) be amended as follows:

"b. Time of making motion by party. The motion must be made ~~before the judgment is pronounced, and shall be filed within six days after finding, plea, or verdict of guilty~~ not later than 45 days after plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction may be rendered, but in any case not later than five days before the date set for pronouncing judgment."

Form 8, Appendix of Forms.

That Form 8, Appendix of Forms, be stricken and the following new Form 8 be substituted:

"Form 8 (front side)

TRIAL INFORMATION

IN THE IOWA DISTRICT COURT FOR \_\_\_\_\_ COUNTY

THE STATE OF IOWA	)	
	)	TRIAL INFORMATION
vs.	)	
	)	No. _____
_____ Defendant	)	

COMES NOW \_\_\_\_\_ as County Attorney of \_\_\_\_\_ County, Iowa, and in the name and by the authority of the State of Iowa accuses \_\_\_\_\_ of the crime of \_\_\_\_\_ committed as follows: The said \_\_\_\_\_ on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_ in the County of \_\_\_\_\_ and State of Iowa did unlawfully and willfully

in violation of \_\_\_\_\_ of The Iowa Criminal Code.  
 State of Iowa )  
 \_\_\_\_\_ County ) ss.

I, \_\_\_\_\_, being first duly sworn, do depose and say that I have made a full and careful investigation of the facts upon which the above charge is based and that the allegations contained in the above and foregoing Trial Information are true as I verily believe.

\_\_\_\_\_  
 County Attorney

Subscribed and sworn to by \_\_\_\_\_  
 before me, the undersigned, on \_\_\_\_\_.

(CLERK OF COURT) (NOTARY PUBLIC) (JUDGE)

On \_\_\_\_\_ I find that the evidence contained in the within Trial Information and minutes of evidence, if unexplained, would \_\_\_\_\_ warrant a conviction by the trial jury, and being satisfied from the showing made herein that this case should \_\_\_\_\_ be prosecuted by Trial Information the same is \_\_\_\_\_ approved.

- Defendant is released on:
1. personal recognizance \_\_\_\_\_
  2. appearance bond \$ \_\_\_\_\_
    - a. unsecured \_\_\_\_\_
    - b. secured \_\_\_\_\_
  3. other (specify) \_\_\_\_\_.

\_\_\_\_\_  
 JUDGE OF THE \_\_\_\_\_ JUDICIAL  
 DISTRICT OF THE STATE OF IOWA"

(Court file stamp)

"Form 8 (back side)

This Trial Information, together with the minutes of evidence relating thereto, is duly filed in the District Court of Iowa for \_\_\_\_\_ County this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

CLERK OF THE DISTRICT COURT OF IOWA FOR \_\_\_\_\_ COUNTY

By: \_\_\_\_\_ Deputy Clerk

A TRUE INFORMATION

\_\_\_\_\_  
County Attorney

\*\*\*\*\*

Names of Witnesses

Respectfully submitted,  
THE SUPREME COURT OF IOWA

/s/ C. Edwin Moore  
C. Edwin Moore, Chief Justice

Des Moines, Iowa  
January 17, 1978

ACKNOWLEDGMENT

I, Steven C. Cross, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the seventeenth day of January, 1978 of the foregoing report of the Supreme Court of Iowa pertaining to Rules of Criminal Procedure.

/s/ Steven C. Cross  
Secretary of the Senate, 1978  
Regular Session of the Sixty-  
seventh General Assembly of the  
State of Iowa.

ACKNOWLEDGMENT

I, David L. Wray, Chief Clerk of the House of Representatives of the State of Iowa, hereby acknowledge delivery to me on this seventeenth day of January, 1978 of the foregoing report of the Supreme Court of Iowa pertaining to Rules of Criminal Procedure.

/s/ David L. Wray  
Chief Clerk of the House of  
Representatives, 1978 Regular  
Session of the Sixty-seventh  
General Assembly of the State  
of Iowa.

## CERTIFICATE

I, Arthur A. Neu, do hereby certify that I am the President of the Senate of the 1978 Regular Session of the Sixty-seventh General Assembly of the State of Iowa; and I, Kevin P. Light, do hereby certify that I am the Acting Secretary of the Senate of the 1978 Regular Session of the Sixty-seventh General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Acting Secretary that on the seventeenth day of January, 1978, the Supreme Court of the State of Iowa reported to said Senate, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making said report to the 1978 Regular Session of the Sixty-seventh General Assembly was within the twenty days subsequent to the convening of the 1978 Regular Session of the Sixty-seventh General Assembly;

THAT no other report pertaining to the Rules of Criminal Procedure was made or filed by said Supreme Court with said Senate;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure were made or enacted at such 1978 Regular Session of said Sixty-seventh General Assembly.

Signed this 16 day of July, 1978, being the last legislative day of the 1978 Regular Session of the Sixty-seventh General Assembly. [See Code §684.19]

/s/ Arthur A. Neu  
Arthur A. Neu  
President of the Senate

/s/ Kevin P. Light  
Kevin P. Light  
Acting Secretary of the Senate  
1978 Regular Session of the  
Sixty-seventh General Assembly  
of the State of Iowa

## CERTIFICATE

I, Dale M. Cochran, do hereby certify that I am the Speaker of the House of Representatives of the 1978 Regular Session of the Sixty-seventh General Assembly of the State of Iowa; and I, David L. Wray, do hereby certify that I am the Chief Clerk of the House of Representatives of the 1978 Regular Session of the Sixty-seventh General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Chief Clerk that on the seventeenth day of January, 1978, the Supreme Court of the State of Iowa reported to said House of Representatives, and filed with it, the attached and foregoing Rules of Criminal Procedure;

THAT the date of making said report to the 1978 Regular Session of the Sixty-seventh General Assembly was within the twenty days subsequent to the convening of the 1978 Regular Session of the Sixty-seventh General Assembly;

THAT no other report pertaining to the Rules of Criminal Procedure was made or filed by said Supreme Court with said House of Representatives;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Criminal Procedure were made or enacted at such 1978 Regular Session of said Sixty-seventh General Assembly.

Signed this 16<sup>th</sup> day of July, 1978, being the last legislative day of the 1978 Regular Session of the Sixty-seventh General Assembly. [See Code §684.19]

/s/ Dale M. Cochran

Dale M. Cochran  
Speaker of the House

/s/ David L. Wray

David L. Wray  
Chief Clerk of the House of  
Representatives, 1978 Regular  
Session of the Sixty-seventh General  
Assembly of the State of Iowa